

103D CONGRESS
1ST SESSION

S. 168

To provide for procedures for the review of Federal department and agency regulations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 5), 1993

Mr. GLENN (for himself and Mr. AKAKA) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To provide for procedures for the review of Federal department and agency regulations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Regulatory Review
5 Sunshine Act of 1993”.

6 **SEC. 2. DEFINITIONS.**

7 For purposes of this Act, the term—

8 (1) “agency” means an agency as defined under
9 section 551(1) of title 5, United States Code, and
10 section 552(f) of title 5, United States Code;

1 (2) “regulatory review” means the evaluation,
2 review, oversight, supervision, or coordination of
3 agency rulemaking activity by a reviewing entity di-
4 rected by the President or his designee to conduct
5 such review on an ongoing basis;

6 (3) “reviewing entity” means any agency, or
7 other establishment in the executive branch of the
8 Federal Government established by the President,
9 which engages, in whole or in part in regulatory re-
10 view;

11 (4) “review action” means any action, including
12 but not limited to a recommendation or direction, re-
13 garding an agency rulemaking activity taken by a re-
14 viewing entity; and

15 (5) “rulemaking activity” means any activity
16 involving a rulemaking as defined under section
17 551(5) of title 5, United States Code, and includes
18 activity involving a schedule or plan for rulemaking,
19 strategy statements, guidelines, policy manuals,
20 grant and loan procedures, advance notices of pro-
21 posed rulemaking, press releases and other docu-
22 ments announcing or implementing regulatory policy
23 that affects the public.

1 **SEC. 3. DISCLOSURE BY A REVIEWING ENTITY.**

2 (a) **PUBLIC ACCESS.**—A reviewing entity shall
3 establish procedures, consistent with subsection (b), to
4 provide public access to information concerning each agen-
5 cy rulemaking activity under its review. Such information
6 shall include a copy of—

7 (1) all written communications, regardless of
8 format, including drafts of all proposals and associ-
9 ated analyses, between the reviewing entity and the
10 rulemaking agency;

11 (2) all written communications, regardless of
12 format, between the reviewing entity and any person
13 not employed by the Federal Government relating to
14 the substance of an agency rulemaking activity;

15 (3) a record, including the date, participants,
16 and substance, of all oral communications relating to
17 the substance of an agency rulemaking activity, in-
18 cluding meetings, between the reviewing entity and
19 any person not employed by the Federal Govern-
20 ment;

21 (4) a written explanation as required by section
22 4(c) and the date of any significant review action;
23 and

24 (5) any notice of any extensions of review under
25 section 6.

1 (b) PROCEDURES.—Information described under sub-
2 section (a) shall be made available to the public upon
3 request—

4 (1) within 14 days of conclusion of review;

5 (2) in a manner consistent with the require-
6 ments of section 552(a) of title 5, United States
7 Code; and

8 (3) for review, and copying, in a publicly acces-
9 sible reading room during normal business hours.

10 **SEC. 4. DISCLOSURE TO A RULEMAKING AGENCY BY A RE-**
11 **VIEWING ENTITY.**

12 (a) WRITTEN COMMUNICATIONS.—A reviewing entity
13 shall transmit to the rulemaking agency, on a timely basis,
14 copies of any written communications between the review-
15 ing entity and any person not employed by the Federal
16 Government concerning the substance of a rulemaking ac-
17 tivity of that agency.

18 (b) ORAL COMMUNICATIONS.—A reviewing entity
19 shall disclose to the rulemaking agency, on a timely basis,
20 all oral communications, including meetings, between any
21 person not employed by the Federal Government and the
22 reviewing entity concerning the substance of a rulemaking
23 activity of that agency. The reviewing entity shall—

1 (1) advise the rulemaking agency of the date,
2 participants, and substance of such communications;
3 and

4 (2) invite the rulemaking agency head or des-
5 ignee to all scheduled meetings involving such com-
6 munications.

7 (c) **EXPLANATION OF SIGNIFICANT REVIEW AC-**
8 **TION.**—A reviewing entity shall, in a timely manner, pro-
9 vide the rulemaking agency with a written explanation of
10 any significant review action taken by the reviewing entity
11 concerning an agency rulemaking activity.

12 **SEC. 5. PUBLIC DISCLOSURE BY A RULEMAKING AGENCY.**

13 (a) **STATUS OF REVIEW.**—A rulemaking agency shall
14 upon request identify a rulemaking activity, the date upon
15 which it was submitted to a reviewing entity for review,
16 and any notice of any extensions of review under section
17 6.

18 (b) **EXPLANATIONS.**—For each proposed and final
19 rule, a rulemaking agency shall explain in its rulemaking
20 notice any significant changes made to such rule as a con-
21 sequence of regulatory review.

22 (c) **RECORD.**—A rulemaking agency shall place in the
23 appropriate rulemaking record all of the documents re-
24 ceived from a reviewing entity as required under section
25 4.

1 **SEC. 6. TIME LIMITS FOR REVIEW.**

2 (a) **TIME LIMITS.**—Within 60 days after the receipt
3 of a rulemaking activity submitted to a reviewing entity
4 for review, the reviewing entity shall conclude review of
5 the rulemaking activity. The reviewing entity may, for
6 good cause explained to the rulemaking agency extend the
7 time for review for 30 days.

8 (b) **RESOLUTION OF OUTSTANDING ISSUES.**—If the
9 President, or such other person or entity as the President
10 may designate, reviews for resolution an issue arising out
11 of a regulatory review—

12 (1) the applicable time limits described under
13 subsection (a) may be extended, although any such
14 issue shall be resolved as promptly as practicable;
15 and

16 (2) any such review shall be subject to the re-
17 quirements of this Act, except for section 6(a).

18 (c) **EXTENSIONS.**—A reviewing entity shall notify the
19 rulemaking agency of an extension beyond 60 days and
20 provide public notice, pursuant to sections 3 and 7. The
21 rulemaking agency shall promptly publish a notice of any
22 such extension in the Federal Register, and shall give pub-
23 lic notice pursuant to section 5.

24 **SEC. 7. PUBLIC ACCOUNTING OF REGULATORY REVIEW.**

25 (a) **PUBLICATION OF ACCOUNTING.**—The Office of
26 Management and Budget shall prepare and make available

1 to the public a monthly and an annual accounting of regu-
2 latory review conducted by any and all reviewing entities.
3 Such accounting shall include a list of all rulemaking ac-
4 tivities submitted to a reviewing entity for review, under
5 review by a reviewing entity, or for which a review action
6 was taken by a reviewing entity during the reporting pe-
7 riod.

8 (b) INFORMATION INCLUDED IN ACCOUNTING.—The
9 monthly accounting required under subsection (a) shall be
10 prepared and made available to the public within 10 work-
11 ing days of the end of each month and shall include the
12 name and type of each rulemaking activity reviewed, the
13 reviewing entity, the rulemaking agency, the date of sub-
14 mission, the status of review, notice of any extensions of
15 review under section 6, any review action, the date of such
16 action, and the authority for review.

17 (c) FEDERAL REGISTER PUBLICATION.—Each rule-
18 making agency shall publish in the Federal Register with-
19 in 10 working days of the end of each month a list of
20 all rulemaking activities undergoing regulatory review dur-
21 ing the preceding month. Such list shall include the name
22 and type of each rulemaking activity, the reviewing entity,
23 the date of submission, any review action taken during the
24 reporting period, and the date of any such action.



1 **SEC. 8. EXCLUSIONS.**

2 Oral communications with the President, the Vice
3 President, the Administrator of the Environmental Pro-
4 tection Agency, the Director of the Office of Management
5 and Budget, and the heads of executive departments as
6 defined under section 101 of title 5, United States Code,
7 are not covered by this Act.

8 **SEC. 9. EFFECT OF ACT.**

9 (a) **AUTHORIZATION.**—Nothing in this Act authorizes
10 a reviewing entity to—

11 (1) review a rulemaking activity; or

12 (2) direct an agency to make a decision with re-
13 gard to a rulemaking activity unless specifically au-
14 thorized by law.

15 (b) **ALTERATIONS.**—Nothing in this Act alters in any
16 manner—

17 (1) rulemaking authority vested by law in the
18 head of an agency;

19 (2) any legally mandated criteria for rule-
20 making; or

21 (3) the application of any statutory or judicial
22 deadline or the authority of an agency to undertake
23 rulemaking activity in an emergency situation.

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